

§217.85

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time between detonations is delayed beyond 20 minutes, post-mission monitoring will be conducted for 30 minutes. At the conclusion of the final detonation, post-monitoring will be conducted for 30 minutes.

(11) Other personnel besides designated observers shall also maintain situational awareness of the presence of marine mammals within the mitigation-monitoring zone to the extent practicable given dive safety considerations.

(12) Divers placing the charges on mines will observe the immediate underwater area around the detonation site for marine mammals and other marine species such as diving birds, sea turtles, and Gulf sturgeon, and report sightings to surface observers.

(13) If a marine mammal is sighted within an established mitigation-monitoring zone or moving towards it, underwater detonation events will be postponed or suspended until the marine mammal that caused the postponement/suspension of training operations has voluntarily left the area and the area is clear of marine mammals for at least 30 minutes.

(14) If a marine mammal is detected within or about to enter an established mitigation-monitoring zone and subsequently cannot be reacquired, the mission will be postponed or suspended until the last verified location is outside the mitigation-monitoring zone, the animal is moving away from the area, and the area is clear of marine mammals for at least 30 minutes.

(15) Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress will be reported to Eglin Air Force Base. Eglin Air Force Base will coordinate with other members of marine mammal stranding networks, as appropriate, and report these events to NMFS or U.S. Fish and Wildlife Service. The report will contain date and time of sighting, location, species description, and indications of the animal's status.

(16) Training operations shall be suspended if the conditions of §217.83(a)–(d) regarding the injury, serious injury, or death of a marine mammal during NEODS training operations are met.

(17) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§217.85 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization pursuant to §216.106 of this chapter and §217.87 for activities described in §216.80(a) are required to cooperate with NMFS, and any other Federal, state, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southeast Region, NMFS, by letter or telephone, prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in §217.80(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in §217.80(b), then the Holder of the Letter of Authorization must, in addition to complying with the requirements of §217.82(a)–(d), notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301-427-8400), within 24 hours of the discovery of the injured or dead animal.

(b) Holders of Letters of Authorization must designate trained, qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to perform the following monitoring requirements:

(1) For NEODS testing, areas to be used in missions shall be visually monitored for marine mammal presence from a surface support vessel prior to detonation of mine neutralization charges. Monitoring shall be conducted 30 minutes before missions to clear the mitigation-monitoring zone. Post-mission monitoring shall also be conducted for 30 minutes after the final detonation (concentrated on the area down current of the test site). If marine mammals are inside the mitigation-monitoring zone, detonations shall be postponed until they have left the area. The observer on the vessel

must be equipped with the proper optical equipment and lines of communication in order to recommend the decision to move forward with the mission.

(2) Monitoring shall occur pre-mission (for 30 minutes), throughout the mission, and post-mission (for 30 minutes). Post-mission monitoring shall concentrate on the area down current of the test site.

(3) Survey clearance procedures shall be conducted using best operational methods possible. After the mitigation-monitoring zone is cleared, all dolphins and protected species indicators (e.g., *Sargassum* rafts) shall be avoided to the maximum extent possible.

(4) Clearance procedures shall be re-conducted if dolphins or protected species indicators (e.g., *Sargassum* rafts) are encountered.

(5) After conducting post-mission monitoring, NEODS training operations data as required by Eglin Air Force Base's Natural Resources Section, 96 CEG/CEVSN shall be reported. Post-mission monitoring shall commence immediately following each detonation and shall be concentrated on the area down current of the test site. If any injured or dead marine mammals are observed, that information will be reported and coordinated with marine animals stranding networks.

(6) An annual summary (coordinated through 96 CEG/CEVSN) of mission observations shall be submitted to: NMFS, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, Florida 33702; and NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, Maryland 20910.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit an annual report summarizing the specified activity as well as monitoring and mitigation data to the Southeast Regional Administrator and Director of the Office of Protected Resources, NMFS, within 90 days after the conclusion of the NEODS training operations. This report must contain the following information:

(1) Date(s), time(s), and location(s) of explosive activities,

(2) Design of the monitoring program,

(3) Results of the monitoring program including, but not necessarily limited to:

(i) Species counts,

(ii) Numbers of observed disturbances,

(iii) Descriptions of the disturbance behaviors before, during, and after explosive activities,

(iv) Bearing and distances,

(v) Observations of unusual behaviors, numbers, or distributions of marine mammals in the activity area shall be reported to NMFS and the U.S. Fish and Wildlife Service so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing marine mammals, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish shall be reported to NMFS and U.S. Fish and Wildlife Service.

(e) An annual report (referred to in § 217.85(d)) must be submitted at the time of notification of the renewal of the Letter of Authorization.

(f) A draft comprehensive final report must be submitted at least 180 days prior to expiration of these regulations. This comprehensive technical report shall provide full documentation of methods, results, and interpretation of all monitoring during the first four and a half years of the Letter of Authorization. A revised final comprehensive technical report, including all monitoring results during the entire period of the Letters of Authorization, must be submitted 90 days after the end of the period of effectiveness of the regulations. This report shall summarize the activities undertaken and the results reported in all previous reports.

(g)(1) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by a Letter of Authorization, such as an injury, serious injury, or mortality, Eglin Air Force Base will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of

Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Southeast Regional Marine Mammal Stranding Network at 877–433–8299 (*Blair.Mase@noaa.gov* and *Erin.Fougeres@noaa.gov*) (Florida Marine Mammal Stranding Hotline at 888–404–3922). The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the incident;
- (ii) Description of the incident;
- (iii) Status of all noise-generating source use in the 24 hours preceding the incident;
- (iv) Water depth;
- (v) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- (vi) Description of all marine mammal observations in the 24 hours preceding the incident;
- (vii) Species identification or description of the animal(s) involved;
- (viii) Fate of the animal(s); and
- (ix) Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Eglin Air Force Base to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Eglin Air Force Base may not resume their activities until notified by NMFS via letter or email, or telephone.

(2) In the event that Eglin Air Force Base discovers an injured or dead marine mammal, and the lead observer determines that the cause of injury or death is unknown and the death is relatively recent (*i.e.*, less than a moderate state of decomposition as described in the next paragraph), Eglin Air Force Base will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov* and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299) and/or by email to the Southeast Regional Stranding Coordinator

(*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident, NMFS will work with Eglin Air Force Base to determine whether modifications in the activities are appropriate.

(3) In the event that Eglin Air Force Base discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the Letter of Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Eglin Air Force Base will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Southeast Regional Marine Mammal Stranding Network (877–433–8299), and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*), within 24 hours of discovery. Eglin Air Force Base will provide photographs or video footage (if available) or other documentation of the stranded animals sighting to NMFS and the Marine Mammal Stranding Network.

§ 217.86 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 217.80(a) must apply for and obtain either an initial Letter of Authorization in accordance with § 217.87 or a renewal under § 217.88.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Application for a Letter of Authorization and for renewals of Letters of Authorization must include the following: